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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States parties due in 1988

Addendum

PERU*

[23 June 1992]

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* This document contains the additional information submitted by the Government of Peru in accordance with the decision taken by the Committee at its 1148th meeting, held on 10 April 1992.

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DECREE-LAW CONVENING ELECTIONS ON 22 NOVEMBER 1992 OF REPRESENTATIVES TO THE DEMOCRATIC CONSTITUENT CONGRESS

Decree-Law No. 25557

THE PRESIDENT OF THE REPUBLIC

CONSIDERING THAT:

The Government of Emergency and National Reconstruction

With the consenting vote of the Council of Ministers

Has issued the following Decree-Law:

Article 1. Elections of representatives to the Democratic Constituent Congress are convened and shall take place on 22 November 1992.

Article 2. The procedure, rules and other conditions governing the electoral process, as well as the confirmation and functioning of the Democratic Constituent Congress, shall be enacted by statute.

Article 3. This Decree-Law shall enter into force on the day following its publication in the Diario Oficial El Peruano.

Issued at Government House, Lima, on 17 June 1992.

ALBERTO FUJIMORI FUJIMORI
Constitutional President of the Republic

OSCAR DE LA PUENTE RAYGADA
President of the Council of Ministers and Minister for Foreign Affairs

VICTOR MALCA VILLANUEVA
Minister of Defence

CARLOS BOLOÑA BEHR
Minister of Economy and Finance

JUAN BRIONES DAVILA
Minister of the Interior

FERNANDO VEGA SANTA GADEA
Minister of Justice
Holder of the Portfolio of Labour and Social Welfare and Education

ABSALON VASQUEZ VILLANUEVA
Minister of Agriculture
Holder of the Portfolio of Health

JORGE CAMET DICKMANN
Minister of Industry, Internal Trade, Tourism and Integration

ALFREDO ROSS ANTEZANA
Minister of Transport, Communications, Housing and Construction

JAIME SOBERO TAIRA
Minister of Fisheries

JAIME YOSHIYAMA TANAKA
Minister of Energy and Mining

JORGE LAU KONG
Minister of the Presidency

ACCORDINGLY:

Orders its publication and enforcement.

Lima, 17 June 1992.

ALBERTO FUJIMORI FUJIMORI
Constitutional President of the Republic

OSCAR DE LA PUENTE RAYGADA
President of the Council of Ministers and Minister for Foreign Affairs

JUAN BRIONES DAVILA
Minister of the Interior

Introduction

1. Since the reintroduction of democracy, clearly expressed in the presidential elections of 1980 and during the following periods of constitutional government, with presidents elected by direct, universal and secret suffrage, Peru has maintained the firm intent of preserving democracy and strengthening the institutions set up in the country for its effective realization.

2. On 28 July 1990 a radical change began as the passing months testified to the superficiality imparted to Peruvian democracy by the deterioration of certain institutions of the State, whose primary aims had departed from the objective of benefiting the vast majority of the population. Democracy was riddled with chaos, corruption and failure to identify with the nation's main interests; this was so even in the Legislature, the Judiciary, the National Council of the Magistracy, the Court of Constitutional Guarantees and the Departments of the Government Attorney and the Comptroller-General of the Republic.

3. These institutions were in fact obeying partisan instructions and implementing a strategy of opposition in order to overthrow reform and sabotage the economic programme. This obstructionist attitude was demonstrated during the first 20 months of government administration; even in the past 6 months the National Congress has repealed legislation promulgated by the Executive under delegated powers with the object of combating the narcotics traffic and terrorism. It has also promulgated laws restricting the functions of the President of the Republic.

4. In addition the administration of justice has been a prey to political sectarianism, venality and irresponsibility. The Judiciary, a pillar of any democracy, proved incapable in practice of punishing persons charged with terrorism and illicit drug trafficking, despite public knowledge that both evils have been notoriously on the increase in recent years. The Court of Constitutional Guarantees, the Departments of the Comptroller-General of the Republic and the Attorney-General of the Nation and the National Council of the Magistracy, are not only politicized but have obstructed reforms proposed by the Government.

5. In this situation of internal conflict, the President of the Republic found it necessary, as well as his duty, to treat the situation as an emergency in order to save the country from chaos, collapsed standards, ungovernability, corruption, narcotics trafficking - conducted in collusion with terrorist violence - and other situations. This decision enjoyed the consent and approval of the nation which, far from criticizing the measures adopted, supported them decisively.

6. The group of emergency measures taken by the Government demonstrated clearly the intention to bring about a genuine and far-reaching transformation of the State and its institutions, which are essential for ensuring socio-economic development, social justice and the preservation of human rights.

7. The entire process took shape in the presidential message of 5 April and in the solemn and formal promise of the Government to observe the treaties, conventions, covenants, accords, agreements and other international undertakings entered into by Peru and specified in article 6 of Decree-Law No. 25418, the Basic Act of Government.

8. In this connection, Peru has been fulfilling its international undertakings, especially the American Convention on Human Rights and the International Covenant on Civil and Political Rights, and gives special priority to the provisions in articles 4, 6, 7, 9, 19 and 25 of the Covenant. In particular we can affirm that the Government respects the right to life, since its actions have constantly been directed towards that end and towards safeguarding the right in question, principally from terrorist groups such as the Shining Path and the Tupac Amaru Revolutionary Movement; from the outset of their criminal activities they have violated the human rights of the inhabitants of all classes of society in Peru, and particularly the poorest groups, whom they claim to defend. Their favourite victims have also been political authorities, buildings, members of the clergy, foreigners and members of the Peruvian police and the armed forces.

9. The latter institutions have seen their members perish year after year, leaving children, widows and mothers abandoned, poverty-stricken and orphaned. Few international human rights organizations have made statements about this; their indifference has given rise in Peru to the idea that only terrorists who are free or imprisoned possess human rights. Why are questions raised about police intervention in the riot caused by terrorist detainees at Castro Castro Prison, the argument being that the crime of genocide has been committed? This assertion is unfounded, the forces of order having acted with care and judgement and used every means of persuasion permitted by the laws and regulations.

10. No form of slavery or servitude exists in Peru and the right to liberty and security of person is respected. If there have been any exceptions in the latter case, however, they have been fleeting and dictated by security measures compatible with the proclaimed state of emergency, as provided for in article 4 of the International Covenant on Civil and Political Rights and article 27 of the American Convention on Human Rights, with a view to preventing serious disturbances and political and social agitation on the part of political leaders occupying important posts in the Legislature and the Judiciary. It would be very easy to encourage confrontation with the forces of order, a situation which might also be turned to advantage by Shining Path and the Tupac Amaru Revolutionary Movement.

11. A very high percentage of the Peruvian people have supported the measures taken by the Government of Emergency and National Reconstruction and no use has been made of the right of insurgency enshrined in article 82 of the Peruvian Constitution. Article 9, which sets forth the procedures and rights benefiting persons under arrest or detention, has been respected as well. Moreover, no one in Peru has been or is being persecuted politically; persons who have left the country have done so by virtue of their rights under article 12 (2) of the Covenant and article 2 (9) of the present Political Constitution of Peru.

12. All this information has been disseminated by the various media, which avail themselves of the country's unrestricted freedom of the press to offer criticism of the Government's different measures; this is valuable because it publicizes the positions and suggestions of major leaders of the opposition and of the population as a whole. Many of these pronouncements result in changes of direction; being criticisms born of reflection and calm and considered judgement, they are of benefit to the country when made public.

13. The unrestricted freedom of the press makes for control of the Government and for the transparency of its actions and decisions in the eyes of national and international public opinion, in compliance with article 19 of the Covenant.

14. Furthermore, at the present time the Government of Emergency and National Reconstruction is clearly demonstrating its observance and fulfilment of the voluntary undertaking entered into at Nassau on 18 May at the meeting of foreign ministers of the Organization of American States. It is also clearly established that the measures adopted by the Peruvian Government are strictly temporary and that once its objective as laid down in the Basic Act has been achieved there would be a return to the institutional system: not, however, to the one in force before 5 April, but to an institutional system characterized by a democracy in which there is a genuine balance of powers, with representative institutions that are examples of efficiency and purpose and fully represent and respond to the expectations of the Peruvian people, who choose those institutions in lawful elections; a democracy in which the population participates fully in all political, economic, social, cultural and similar organizations and which safeguards the full and unrestricted observance of human rights.

15. In this connection, on 17 June the Premier, Oscar de la Puente Raygada, stipulated 22 November 1992 as the definitive date for elections to the Democratic Constituent Congress (CCD) (see p. 1) and stated that the basis and mechanisms of the elections would be decided at the national dialogue convened for 30 June. With regard to the national dialogue, on 19 June the President of Peru, Ing. Alberto Fujimori Fujimori, stated officially that on 30 June talks would take place exclusively with political parties, while the talks with organizations representing the country's citizens would take place on 25 June. The President also announced that the contribution made by the institutions and political parties would lead to the drafting of the new Electoral Act and the Political Parties Act.

INFORMATION CONCERNING ARTICLES 4, 6, 7, 9, 19 AND 25 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 4

16. Article 4 of the Covenant provides for the possibility of measures being taken which derogate from the obligations existing under the Convention as long as there is a situation which threatens the life of the nation taking the measures in question. These must be compatible with international law and in no event create or be based on discrimination on grounds such as sex, race,

religion or language. This is consistent with article 27 of the American Convention on Human Rights, to which Peru is a party. In view of the serious situation which Peru is experiencing, it has been necessary to declare the country to be in a state of emergency and to set it on the path of national reconstruction, while respecting the inherent rights of the individual, which may not be infringed, and implementing international conventions and undertakings.

17. Article 4 of the Covenant also refers, in paragraph 2, to the fundamental rights of the individual which cannot be derogated from in any manner whatsoever by a declaration of emergency or by special measures. In the case of Peru, these rights, set forth in articles 6, 7, 8 (1) and (2), 11, 15, 16 and 18 of the Covenant, have always been respected, having been embodied in various provisions of article 2 of the country's Political Constitution.

18. With regard to article 8 (1) and (2) of the Covenant - provisions which are linked to article 4 of the Universal Declaration of Human Rights, article 6 of the American Convention on Human Rights and article 2 of the Slavery Convention - article 20 (2) (b) of the Peruvian Constitution reaffirms the abolition of slavery, servitude and traffic in human beings in any of their forms.

19. The principle of non-imprisonment for debt, traditionally observed in Peru, is an international norm embodied in article 11 of the Covenant as part of the right to liberty and security of person, which is enshrined in article 2 (20) of the Peruvian Constitution.

20. In addition, article 2 (20) (d) of the Constitution contains a guarantee that no one shall be charged or sentenced for an act or omission which at the time it was committed had not previously been legally defined, in express and unequivocal manner, as a punishable offence carrying the penalty prescribed by law, in conformity with article 15 (1) and (2) of the Covenant. This is connected with the principle of beneficial retroactivity of the law laid down in article 6 of the Penal Code, article IX of the preliminary title of the Code of Penal Procedure and article VIII of the Code of Penal Enforcement.

21. With regard to article 16 of the Covenant, the individual is recognized as a person before the law in Peru and as such is able to develop and to participate in the legal life of the country, as provided in article 2 (1) of the Constitution.

22. Article 2 (3) of the Constitution guarantees the right of everyone to freedom of conscience and religion and to freedom from persecution for ideas or beliefs, in accordance with article 18 of the Covenant. The same provision of the Constitution also states that the public exercise of all religious faiths is free as long as it does not offend morals or disturb public order.

Article 6

23. The right to life is proclaimed in article 2 (1) of the Peruvian Constitution, in conformity with article 3 of the Universal Declaration of Human Rights, article 1 of the American Declaration of the Rights and Duties

of Man, article 4 of the American Convention on Human Rights and article 6 (1) of the Covenant. In Peru the right to life is respected from conception, to the extent that there is no death penalty except for treason in the event of war with a foreign country.

Article 7

24. Article 7 of the Covenant prohibits torture and cruel, inhuman or degrading treatment or punishment, as well as medical or scientific experimentation without a person's consent; this is embodied in article 2 (1) and (20) (j) of the Constitution and accords with articles 3 and 5 of the Universal Declaration of Human Rights, articles 1, 25, third paragraph, and 26, second paragraph, of the American Declaration of the Rights and Duties of Man and articles 1-6 of the American Convention on Human Rights.

25. Articles 121 et seq. of the Penal Code define offences against life, the person and health. Article III of the preliminary title of the Code of Penal Enforcement provides that the administration of punishment and the imposition of custody on defendants shall take place without torture or inhuman or degrading treatment or any other act or procedure which violates the prisoner's dignity, including mental torture (article 234 of the Covenant).

Article 9

26. The right to liberty and security of person is provided for in various paragraphs of article 2 of the Constitution, including the prohibition of arbitrary imprisonment and retroactive operation of the criminal law, the right of a person to be informed of the reasons for his detention, the right of a person to be brought before a judge, including the unfettered right for proceedings to be taken against any authority which has detained a person arbitrarily, and the guarantee of habeas corpus. The foregoing is in conformity with articles 3, 9 and 11 (2) of the Universal Declaration of Human Rights, articles 1 and 25 of the American Declaration of the Rights and Duties of Man, articles 9, 11, 14 (6) and 15 of the Covenant and articles 7, 9 and 10 of the American Convention on Human Rights.

Article 19

27. This international norm sets forth the right to freedom of opinion and information, which is enshrined in article 2 (4) of the Constitution. Article 2 (20) (e) of the Constitution provides that there is no crime of opinion. Article 169 of the Penal Code penalizes offences against freedom of expression, in conjunction with the right of honour and personal reputation. This accords with articles 19 and 20 of the Universal Declaration of Human Rights, articles 19-21 of the Covenant, articles 4 and 21 of the American Declaration of the Rights and Duties of Man and articles 13 and 15 of the American Convention on Human Rights.

Article 25

28. In regard to political rights, individuals have the right and opportunity to participate in the political, economic, social and cultural life of the

Nation (art. 2 (16) of the Constitution). Citizens have the right to participate in public affairs, either directly or through representatives freely nominated in periodic elections and in accordance with conditions laid down by law. Any act prohibiting or restraining a citizen from participating in the nation's political life is invalid and punishable.

29. The Peruvian State guarantees and undertakes to respect the rights embodied in the Covenant and proclaims the right of individuals to have recourse to the appropriate authorities in cases of violation of their fundamental rights.